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10/816,652

04/02/2004

Matthew K. Parker

9667

42054

7590

05/03/2006

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EXAMINER

BOCHNA, DAVID

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/816,652

Applicant(s)

PARKER, MATTHEW K.

Examiner

David E. Bochna

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-17 and 21-23 is/are rejected.
- 7) ☒ Claim(s) 18-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 12-17 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Horrigan.

In regard to claims 12, 15 and 21, Horrigan discloses (fig. 1) a shield assembly for wall penetration of flexible tubing, comprising:

an elongated sleeve 13 comprised of a tube or channel having a first side (side shown in fig. 1), a second side (backside as shown in fig. 1), an upper side (top of 13), and a lower side (bottom of 10) and a first open end (top of 13) opposed to a second open end (bottom of 10) whereby flexible tubing may be installed into the first open end, pass through the tube or channel, and exit the second open end;

said elongated sleeve being of predetermined length sufficient to penetrate an exterior frame wall 20 through any exterior sheathing 12 and building siding;

said elongated sleeve being of predetermined inside dimensions to accommodate one or more flexible tubes;

an elongated attachment plate 14 of sufficient strength to resist deformation due to manually applied pressure;

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said attachment plate 14 having one or more attachment holes 11 for installation of mounting hardware;

said attachment plate 14 being affixed to one of the first or second sides (see fig. 1) of the elongated sleeve such that the one or more attachment holes are oriented to permit installation of attachment hardware into a building-framing stud 20, the attachment plate oriented such that it can be installed with its longitudinal dimension vertical and attached to the surface of the stud in the interior of the wall; and

the geometric angle between the centerline of the longitudinal direction of the attachment plate 14 and the elongated dimension of the elongated sleeve 13 is such that, when the centerline of the longitudinal direction of the attachment plate is vertical, the first open end 10 faces at an upward angle whereby flexible tubing can be installed to transition from the vertical inside the wall cavity to the interior of the sleeve and the second open end (end near 23) face at a downward angle outside of the wall.

In regard to claims 13, 16 and 22, wherein geometric angle between the attachment angle and the elongated tube is between twenty (20) degrees and seventy five (75) degrees.

In regard to claims 14, 17 and 23, wherein the elongated sleeve is comprised of durable material selected from the group comprising at least one of metal, polyvinyl chloride (PVC) or plastic.

Allowable Subject Matter

3. Claims 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

4. Applicant's arguments with respect to claims 12-17 and 21-23 have been considered but are not persuasive. Applicant argues that the device of Horrigan is structurally different from the present invention. Specifically, Applicant argues about the orientation of the sleeve in use as disclosed by Horrigan. However, these are intended use arguments and do not point out the structural differences between Horrigan and the present invention.

Applicant argues that the device of Horrigan does not anticipate the phrase "the first open end faces at an upward angle whereby flexible tubing can be installed to transition from the vertical inside the wall cavity to the interior of the sleeve and the second open end face at a downward angle outside of the wall. The Examiner disagrees, if one were to orient plate 11 of Horrigan vertically, the inside end 10 would point up and the outside end near 23 would point down. The phrase "whereby flexible tubing can be installed to transition from the vertical inside the wall cavity to the interior of the sleeve" is an intended use limitation that carries little patentable weight.

The fact that Horrigan discloses a collar is irrelevant as Horrigan discloses all of the structural limitations recited by the Applicant.

The Examiner contends that sleeve 13 has a top, bottom, left and right side if plate 14 were to be placed in a vertical position, as the upper most point on the sleeve would be the top, the lowest point on the sleeve would be the bottom, and the left and right most points would be the left and right side, respectively.

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The fact that Horrigan has a different mounting means is irrelevant as Horrigan discloses all of the structural limitations recited by the Applicant, specifically an attachment plate 14 having one or more attachment holes (holes for bolts 11).

The rejection of the dependent claims has been maintained because Horrigan anticipates the independent claims for the reasons stated above.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

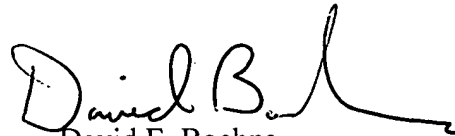
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. Bochna whose telephone number is (571) 272-7078. The examiner can normally be reached on 8-5:30 Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571) 272-7087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "David E. Bochna", with a long horizontal flourish extending to the right.

David E. Bochna
Primary Examiner
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